

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DENNIS W. SOMERVILLE,

Petitioner,

v.

WARDEN MARTINEZ, *et al.*,

Respondent.

Case No. C06-5363 RJB/KLS

ORDER DENYING PETITIONER'S
MOTION TO STAY PETITION FOR
WRIT OF HABEAS CORPUS


This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636 (b) and Local MJR 3 and 4. Presently before the Court is Petitioner's motion to stay his petition. Petitioner asks that if the Court finds that he has not exhausted his state court remedies on any issue, that it stay his petition so that he may seek those remedies through the state. (Dkt. # 20). Petitioner's motion was originally noted for this Court's consideration for November 10, 2006. Respondent asks that the Court delay its consideration of Petitioner's motion to stay until the Court has had an opportunity to review Respondent's response to the petition for habeas corpus, which has now been filed. (Dkt. # 22).

If the Petitioner has presented this Court with a mixed petition containing both exhausted and unexhausted federal claims, the petition may require dismissal. Before doing so, generally the Court is required to provide petitioner with "the choice of returning to state court to exhaust his claims or

1 of amending or resubmitting the habeas petition to present only exhausted claims to the district
2 court.” Rose v. Lundy, 455 U.S. 509, 518-22 (1982). This is not so, however, where the petitioner
3 would be procedurally barred from returning to state court to address the unexhausted claims.
4 Respondent argues that Petitioner is procedurally barred from returning to state court to address the
5 unexhausted claims and therefore, the Court should defer ruling on Petitioner’s motion to stay.

6 The Court agrees that it is premature to rule on Petitioner’s motion to stay prior to receiving
7 complete briefing from the parties on this habeas petition. The petition is presently noted for the
8 Court’s consideration on December 8, 2006. Pursuant to the Order of Service (Dkt. # 11),
9 Petitioner may file and serve a response not later than on the Monday immediately preceding
10 December 8, 2006, and Respondent may file and serve a reply brief not later than on the Thursday
11 immediately preceding December 8, 2006, to address all the issues presented in Petitioner’s habeas
12 petition, including the issue of exhaustion.

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14 Dated this 7th day of December, 2006.

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18 Karen L. Strombom
19 United States Magistrate Judge
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